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**From:**

**Sent:** Monday, February 28, 2011 1:47:05 PM

**To:**

**Cc:**

**Subject:** Reporting of Stock Redemptions Under I.R.C. § 6045

This email responds to your request for assistance as to whether ("Taxpayer") is required to report its stock redemptions on Forms 1099-B, Proceeds from Broker and Barter Exchange Transactions.

According to the information provided in your request, in , among other transactions, Taxpayer redeemed its own stock for the first time without assistance from a transfer agent. No information was provided as to the dates of the various individual redemption transactions, or whether the redemptions occurred in subsequent years.

Among other determinations, the Revenue Agent determined that Taxpayer failed to report the stock redemptions on Forms 1099-B and proposed the imposition of intentional disregard failure to file and failure to furnish penalties under I.R.C. §§ 6721(e) and 6722(e), respectively.

Taxpayer protested the Revenue Agent's findings to the Appeals Division alleging that it filed and furnished all of the required information returns (producing copies of information returns as well as affidavits from various payees affirming receipt of same), or, in the alternative, that no penalties should be imposed as any failures were attributable to reasonable cause under I.R.C. § 6724(a).

Although Taxpayer produced copies of information returns and affidavits from various payees affirming that Forms 1099 were furnished, it failed to produce a copy of a Form 1096, Annual Summary and Transmittal of U.S. Information Returns, and the Internal Revenue Service has no record that these forms were filed for .

Section 6045(a) of the Internal Revenue Code provides that every person doing business as a broker shall, when required by the Secretary, make a return, in accordance with such regulations as the Secretary may prescribe, showing the name and address of each customer, with such details regarding gross proceeds and such other information as the Secretary may by forms or regulations require with respect to such business. The required return is the Form 1099-B.

The regulations define "broker" for purposes of I.R.C. § 6045 as any person that, in the ordinary course of a trade or business during the calendar year, stands ready to effect

sales to be made by others. Treas. Reg. § 1.6045-1(a)(1). A “broker” includes “a corporation that regularly redeems its own stock.” Treas. Reg. § 1.6045-1(b), Examples, Example 2 (vi) states that a corporation that issues and retires long-term debt on an irregular basis is not a broker within the meaning of Treas. Reg. § 1.6045-1(a)(1) in the absence of additional facts that indicate the corporation is a broker.

Thus, Taxpayer would be subject to broker reporting under I.R.C. § 6045 only if it “regularly” redeems its own stock. The term “regularly” is not defined in the regulations. Whether Taxpayer is a “broker” for I.R.C. § 6045 reporting purposes is a factual determination and further development of the facts is necessary. Specifically, the Revenue Agent must determine whether Taxpayer regularly redeems its own stock. If regularity is established, the Service may be able to establish that Taxpayer was a “broker” required to report the stock redemptions on Forms 1099-B for .

If there is no reporting requirement under I.R.C. § 6045, there may be reporting required under I.R.C. § 6041 on Form 1099-MISC. That section requires reporting of fixed or determinable gains, profits, and income of \$600 or more (other than payments to which another reporting section, such as I.R.C. § 6045, applies) . Reporting is not required with respect to payments that do not constitute income to the recipient, or for which the payor cannot determine the amount of the income. See Treas. Reg. §1.6041-1 (a) and (c). The shareholders who redeemed their shares may have gain or loss on their shares, and Taxpayer may or may not know the amount of any gain to the shareholders. If Taxpayer does not know the shareholder’s basis in the shares, it would not be able to determine gain and thus would not have a reporting requirement.

Note that payments to certain recipients are exempt from reporting under both I.R.C. §§ 6041 and 6045, including payments made to corporations during the year at issue.

You requested that we comment as to the proposed assertion of penalty with respect to Taxpayer’s alleged failure to file information returns and furnish payee statements under I.R.C. §§ 6721 and 6722. Since further facts are required to determine whether the Taxpayer had a reporting obligation with respect to these redemption transactions, any comment with respect to penalty would be premature at this time.